

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:05CV301-1-MU  
3:03CR109-02

ELIJAH JAMES GADDY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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**ORDER**

**THIS MATTER** comes before the Court for an initial review of Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, filed, June 23, 2005.

On April 28, 2004, this Court sentenced Petitioner to concurrent terms of 188 months imprisonment on Count One and Counts Five through Seven, and to a mandatory minimum consecutive 60 month term of imprisonment. Judgment was entered on May 7, 2004. Petitioner did not directly appeal his sentence or conviction.

On April 28, 2005, Petitioner filed a Motion to Vacate with this Court alleging that he had received ineffective assistance of counsel because his counsel had failed to honor his request to file a direct appeal. On May 3, 2005, this Court granted Petitioner's Motion to Vacate and reentered his criminal judgment so as to permit him to file a timely direct appeal. Accordingly, on May 12, 2005, Petitioner filed a Notice of Appeal. However, on May 24, 2005, the Court entered an Order granting the Government's Motion to Reconsider; vacating its May 3, 2005, Order; and denying Petitioner's Motion to Vacate. Petitioner's case is still pending on appeal

(05-6790).

On June 23, 2005, Petitioner filed another Motion to Vacate, Set Aside, or Correct Sentence. Because Petitioner's case is still pending<sup>1</sup> in the United States Court of Appeals for the Fourth Circuit, Petitioner's Motion to Vacate, Set Aside, or Correct Sentence is dismissed as premature.

**THEREFORE, IT IS HEREBY ORDERED that** Petitioner's Motion to Vacate, Set Aside, or Correct Sentence is **DISMISSED** without prejudice.

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<sup>1</sup> Regardless of the context of Petitioner's appeal – directly appealing his criminal judgment or appealing the denial of his motion to vacate – it is premature for this Court to rule on Petitioner's present Motion to Vacate.

**Signed: July 7, 2005**

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
Chief United States District Judge

